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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 AT&T MOBILITY LLC, a Delaware limited
liability corporation,

9 Plaintiff,

10 v.

11 HOLADAY-PARKS FABRICATORS, INC.,
12 a Washington Corporation,

13 Defendant,

14 v.

15 EVERGREEN POWER SYSTEMS, INC., a
Washington Corporation; SOURCE NORTH
16 AMERICA CORPORATION, an Illinois
corporation d/b/a Ace Tank & Fueling
17 Equipment, a Division of Source North
America Corporation; and PHILLIPS PUMP
18 LLC, a Connecticut domestic limited liability
company,

19 Third-Party Defendants.
20

C10-468Z

MINUTE ORDER

21 The following Minute Order is made by direction of the Court, the Honorable Thomas
22 S. Zilly, United States District Judge:

23 (1) The Court sets oral argument on Source North America's Motion for Summary
24 Judgment, docket no. 78, for Thursday, December 8, 2011, at 10:30. The
parties should be prepared to focus argument on the following:

25 (a) Can the Court decide as a matter of law whether or not all or part of the
26 relationship between the parties is governed by Article 2 of the UCC?
What are the legal consequences of a decision by the Court that the
relationship between the parties is subject to the provision and

1 limitations of Article 2 of the UCC? If the UCC applies to the entire
2 relationship between the parties, should the Court grant the Motion for
Summary Judgment?

- 3 (b) Can the Court rule as a matter of law that the alleged “other services”
4 described in Holaday-Parks’ Opposition, docket no. 94 at 4-5, are
5 outside the work called for in the Purchase Order (Shafter Decl., docket
6 no. 79, Exhibits 11 and 12). In light of Mr. Giri’s admissions in the
7 record, can the Court conclude as a matter of law that Source North
8 America’s motion should be granted as to the “other services”?
- 9 (c) Can the Court rule as a matter of law that the warranty limitations in the
10 Purchase Order apply to the “goods” and “commissioning services”?
- 11 (d) Assuming the UCC applies, can the Court rule as a matter of law that
12 the warranty provisions and limitation of remedies in the Purchase
13 Order(s) do not fail of their essential purpose under RCW 62A.2-
14 719(2)?

15 (2) Source North America’s Motion to Strike Surreply, docket no. 108, is
16 GRANTED.

17 (3) Each party may file an additional brief, not exceeding 10 pages, addressing
18 what warranty, limitations or disclaimers apply in the event the Court
19 concludes that either (1) the entire relationship between Holaday-Parks and
20 Source North America Corp. is governed by the UCC, or (2) only the first two
21 categories (i.e., “goods” and “commissioning services” under the Purchase
22 Order) are governed by the UCC. Any additional brief must be filed by
23 December 2, 2011.

24 (4) Holaday-Parks’ Motion for Choice of Law, docket no. 90, is GRANTED. The
25 construction contract at issue provides in part that “[t]he laws of the State of
26 Georgia shall govern the validity, construction, interpretation, and performance
of this agreement.” Construction Agreement Article 30 (docket no. 1-2).
AT&T points to no case where a court has applied one state’s law to a breach of
contract claim, but another state’s law to the affirmative defense of the claim.
Accordingly, the Court will apply Georgia law both to AT&T’s breach of contract
claims and to Holaday-Parks’ affirmative defenses to these claims.

(5) The Clerk is directed to send a copy of this Minute Order to all counsel of
record.

Filed and entered this 18th day of November, 2011.

WILLIAM M. McCOOL, Clerk

s/ Claudia Hawney

By _____
Claudia Hawney
Deputy Clerk